

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FLUOR CORPORATION,)
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)
Plaintiff/Counterclaim Defendant)
)
)
v.) No. 4:16CV00429 ERW
)
)
ZURICH AMERICAN INSURANCE)
COMPANY,)
)
Defendant/Counterclaim Plaintiff.)

ORDER

This matter is before the Court on Zurich’s Motion to Disqualify John Wilson as Fluor’s lead counsel [539]. Zurich asserts Fluor has indicated it may seek to have Mr. Wilson participate at trial whenever the jury is out of the courtroom. Zurich objects and asks that the Court enter an Order requiring that Mr. Wilson withdraw from serving as Fluor’s counsel in this case prior to the commencement of trial. Zurich argues Mr. Wilson’s participation as a witness at trial while remaining a lawyer representing Fluor at the trial will confuse the jury.

In response, Fluor asserts Zurich’s “motion to disqualify John Wilson as Fluor’s trial counsel is unnecessary.” Fluor states Mr. Wilson will not question witnesses, present arguments at trial or in pretrial hearings, or sit at counsel’s table after trial begins. Fluor suggests the Court deny Zurich’s motion to disqualify as moot.

By its own terms, Rule 4–3.7 prohibits a lawyer from acting as an “advocate *at a trial* in which the lawyer is likely to be a necessary witness.” *Droste v. Julien*, 477 F.3d 1030, 1036 (8th Cir. 2007) (emphasis added). Rule 4–3.7 on its face does not apply to pretrial proceedings. *Id.* In the Court’s September 21, 2021 Memorandum and Order, the Court put Fluor on notice it

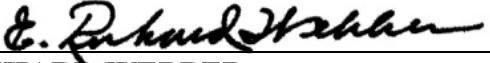
would not condone Mr. Wilson as both an advocate and witness at trial. In denying Zurich's Motion to Exclude the Declaration of John Wilson, the Court stated, "[s]hould Fluor seek to present Mr. Wilson's testimony at trial, Mr. Wilson will be required to step down as an attorney in this case in favor of admission of this evidence in order to comply with [Missouri Rule of Professional Conduct 4-3.7]." ECF No. 481 at 38 n.17.

Given Mr. Wilson's proclaimed status as a witness, the Court finds his disqualification from representation at trial appropriate and Mr. Wilson must withdraw as counsel prior to trial and the pre-trial conference. Zurich's motion on this point is granted.

Accordingly,

IT IS HEREBY ORDERED Zurich's Motion to Disqualify John Wilson as Fluor's lead counsel [539] is **GRANTED**.

So Ordered this 28th Day of June, 2021.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE